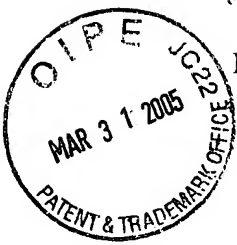


IFW



DOCKET NO. : 2303-28-5

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Peter L. Collins, Brian R. Murphy, and
Alison Bermingham

Serial No.: 10/774,341

Group Art Unit:

Filing Date: February 6, 2004

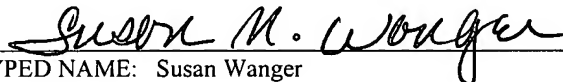
Examiner:

For: Production of Attenuated Respiratory Syncytial Virus Vaccines Involving
Modification of M2 ORF2

DATE OF DEPOSIT: March 28, 2005

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT THIS PAPER IS BEING
DEPOSITED WITH THE UNITED STATES POSTAL
SERVICE AS FIRST CLASS MAIL, POSTAGE PREPAID
ON THE DATE INDICATED ABOVE AND IS ADDRESSED
TO THE COMMISSIONER FOR PATENTS, P.O. BOX 1450,
ALEXANDRIA, VA 22313-1450


TYPED NAME: Susan Wanger

Mail Stop: Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT OR REVIVE
UNINTENTIONALLY ABANDONED APPLICATION**

Applicants respectfully request that the Commissioner reconsider and withdraw a presumptive holding of abandonment in the above-referenced patent application.

Applicants believe that the above-referenced application was abandoned for failure to respond to a Notice of Missing Parts mailed in the application on August 13, 2004. Such holding of abandonment, if correct, is believed to reflect an error in communication between Applicants and the Office, as follows.

Applicants submitted a timely Petition for Extension of time to extend the due date for the reply to the Notice of Missing Parts in the above-referenced application on December 13, 2004. This Petition, a copy of which is enclosed herewith, included the following instruction:

The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 07-1897.

Also on December 13, 2004, Applicants filed a "Request for filing a continuation application under 37 CFR 1.53(b) of pending prior application identified above" (referencing the above application Serial No. 10/774,341). That Request (copy enclosed herewith) claimed priority for the new continuation application (Atty. Docket No. 2303-028-06) to the above-noted priority application Serial No. 10/774,341, and specifically referred to this application as being "copending" for the purpose of perfecting the new continuation filing and its priority claim.

On the basis that Applicants' contemporary submission in the priority application Serial No. 10/774,341 authorized the Commissioner to "charge any fees which may be required" in that application, and on the further basis that copendency of this application was expressly relied upon to support the new continuation application (Atty. Docket No. 2303-028-06), Applicants respectfully submit that it was their intention to satisfy all requirements in the priority application needed at that time to secure copendency between the two applications. As such, it was expected that the base filing fee of \$790 called for in the Missing Parts Notice would be applied in the priority application in accordance with Applicants' authorization to charge any required fees. It was Applicants' further understanding that any ambiguity in the designation of required fees was resolved by the contemporary filing of the new continuation case on the same day, which expressly referenced the priority application as copending.

Contrary to Applicants' intention, there does not appear to have been an assessment made by the PTO against Applicants' deposit account to satisfy the required basic filing fee in the above-referenced application to establish copendency as was required to support the contemporary continuation filing.

Accordingly, Applicants respectfully urge the Commissioner to withdraw any holding of abandonment in the priority application Serial No. 10/774,341 and recognize Applicants' submission in that case on December 13, 2004 as a bona fide transaction intended to transmit payment of "any fees that may be required"—which instruction the Commissioner is urged to regard as inclusive of the outstanding basic filing fee in that case, to support the contemporaneously-submitted continuation application. This construction is further supported by the contemporaneous Request for Filing of Application under 37 CFR 1.53(b),

(Atty. Docket No. 2303-028-06) which expressly relied on copendency with application Serial No. 10/774,341, and thereby further evinced that the unrecognized transaction was a "required" aspect of Applicants' interests in that case within the scope of Applicant's fee debit authorization.

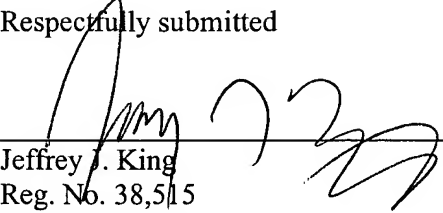
This Petition to Withdraw Holding of Abandonment is solely intended to secure pendency of the priority application Serial No. 10/774,341 as of the December 13, 2004 date of filing of the referenced continuation application, which pendency was otherwise secured by the Petition for Extension filed in the priority application on said date.

By this Petition, Applicants' authorization to the Commissioner provided on December 13, 2004, to charge any fees that may have been required in the priority application Serial No. 10/774,341, inclusive of the basic filing fee, is reaffirmed. It is therefore kindly urged that the Commissioner debit said basic filing fee and withdraw any holding of abandonment up to and including the critical date for copendency of December 13, 2004.

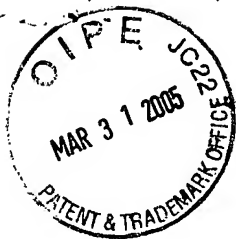
In the event the Commissioner declines to recognize Applicants' intended fee transaction and withdraw the holding of abandonment as requested above, then the Commissioner is respectfully urged to consider this Petition as a Petition to Revive application Serial No. 10/774,341 under 37 CFR 1.137(b) for unintentional abandonment. In this context, Applicants alternatively instruct and authorize the Commissioner to assess the basic filing fee in application Serial No. 10/774,341, along with the fee for the Petition to Revive this application under 37 CFR 1.137(b), together with any additional fees that may be required to secure pendency of application Serial No. 10/774,341 up to the critical date of December 13, 2004, to Deposit Account Number 07-1897. The entire delay between the filing of this Petition and the due date for the reply/fee payment in application Serial No. 10/774,341 was unintentional.

Respectfully submitted

Dated: March 28, 2005



Jeffrey J. King
Reg. No. 38,515
Graybeal Jackson Haley LLP
155 - 108th Avenue N.E., Suite 350
Bellevue, WA 98004-5901
(425) 455-5575



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

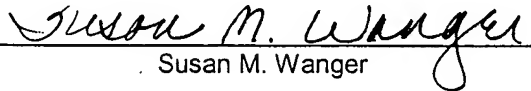
CERTIFICATE OF MAILING OR TRANSMISSION

"Express Mail" mailing label number: ER 438021417 US

Date of Deposit: December 13, 2004

ED438021417US

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR, Section 1.10 on the date indicated above and is addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 by


Susan M. Wanger

Present Application:

Applicants: Peter L. Collins, Brian R. Murphy, and Alison Beamingham

Title: Production of Attenuated Respiratory Syncytial Virus
Vaccines Involving Modification of M2 or F2

Attorney Docket No.: 2303-28-05

Pending Prior Application:

Applicants: Peter L. Collins, Brian R. Murphy, and Alison Beamingham

Serial No.: 10/774,341

Filing Date: February 6, 2004

Title: Production of Attenuated Respiratory Syncytial Virus Vaccines
Involving Modification of M2 and F2.

Examiner/Unit: Not Yet Assigned

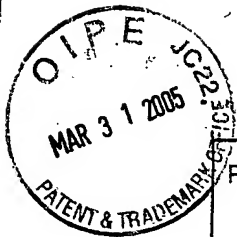
Attorney Docket No.: 2303-28-05

REQUEST FOR FILING APPLICATION UNDER 37 CFR 1.53(b)

This is a request for filing a **continuation application** under 37 CFR 1.53(b) of pending prior application identified above.

1. X A filing date in accordance with 37 CFR 1.10 is requested. (Express mail certificate appears on this transmittal letter.)

2. X A true copy of the prior application as originally filed is enclosed. (See Nos. 10 and 11 for drawing requirements.)
3. X There are no filing fees for this application.
4. Applicant claims small entity status.
5. X Please charge any additional filing fee or credit any overpayment to Deposit Account 07-1897.
6. Enter the amendment previously filed on under 37 CFR 1.116 but unentered in the prior application.
7. A preliminary amendment canceling claims and adding new claims is enclosed. (Claims added by this amendment have been properly numbered consecutively beginning with the number next following the highest numbered original claim in the prior application and have been included in the calculation of the filing fee set forth above.)
8. Cancel in this application original Claims of the prior application before calculating the filing fee. (At least one original independent claim must be retained for filing purposes.)
9. Amend the specification by inserting after the title the following sentence:
"This is a X continuation of the prior continuation application Serial No. 10/774,341, filed February 6, 2004, the benefit of the filing date of which is hereby claimed under 35 USC 120, which is a continuation of U.S. Patent Application No. 09/611,829, filed July 7, 2000, the benefit of the filing date of which is hereby claimed under 35 USC 120, each of which is incorporated herein by reference."
10. Transfer the drawings from prior application to this application and abandon said prior application as of the filing date accorded this application. A duplicate copy of this sheet is enclosed for filing in the prior application file.
- 11a. New formal drawings (sheets) identical to those originally filed in the prior application are enclosed.
- 11b. X Drawings (Figures 1A-13; 18 sheets) identical to those originally filed in the parent application are enclosed.
12. X Priority of U.S. application Serial No. 10/774,341, filed on February 6, 2004, and U.S. Patent Application No. 09/611,829, filed July 7, 2000, is claimed under 35 USC 120.
13. Priority of application Serial No. filed on , 19 , in (country) is claimed under 35 USC 119.
14. The prior application is assigned to Reel Frame .



Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PETITION FOR EXTENSION OF TIME UNDER 37 CFR 1.136(a)
FY 2005
(fees effective on or after October 1, 2004)

Docket Number (Optional)

2303-28-05

Application Number 10/774,341

Filed May 17, 2004

For Production of Attenuated Respiratory Syncytial Virus Vaccines Involved in Modification of M2 ORF2

Art Unit

Examiner

This is a request under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above identified application.

The requested extension and fee are as follows. (check time period desired and enter the appropriate fee below):

	<u>Fee</u>	<u>Small Entity Fee</u>	
<input type="checkbox"/> One month (37 CFR 1.17(a)(1))	\$110	\$55	\$ _____
<input checked="" type="checkbox"/> Two months (37 CFR 1.17(a)(2))	\$430	\$215	\$ _____
<input type="checkbox"/> Three months (37 CFR 1.17(a)(3))	\$980	\$490	\$ _____
<input type="checkbox"/> Four months (37 CFR 1.17(a)(4))	\$1530	\$765	\$ _____
<input type="checkbox"/> Five months (37 CFR 1.17(a)(5))	\$2080	\$1040	\$ _____

- ☐ Applicant claims small entity status. See 37 CFR 1.27.
- ☐ A check in the amount of the fee is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director has already been authorized to charge fees in this application to a Deposit Account.
- ☒ The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 07-1897. I have enclosed a duplicate copy of this sheet.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

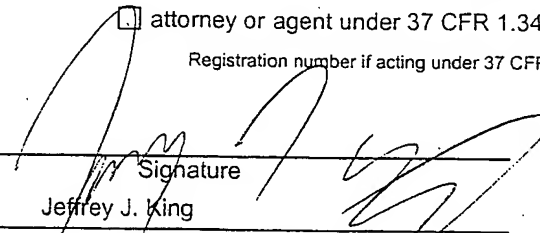
I am the.

- ☐ applicant/inventor.
- ☐ assignee of record of the entire interest. See 37 CFR 3.71

Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).

- ☒ attorney or agent of record. Registration Number 38,515
- ☐ attorney or agent under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34. _____



Signature
Jeffrey J. King

Typed or printed name

December 19, 2004

Date

(425) 455-5575

Telephone Number

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☐ Total of 1 forms are submitted.

This collection of information is required by 37 CFR 1.136(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 6 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



CERTIFICATE OF MAILING

Inventors: Peter L. Collins; Alexander Bukreyev;
Brian R. Murphy; Stephen S. Whitehead

Title of Invention: Production of Attenuated Human-bovine Chimeric
Respiratory Syncytial Virus Vaccines

Atty. Docket. No.: 2303-028-05

CERTIFICATE OF MAILING OR TRANSMISSION

Date of Deposit: March 28, 2005

I hereby certify that this paper or fee is being deposited with the United States Postal Service, first class postage prepaid, under 37 CFR, Section 1.10 on the date indicated above and is addressed to:

The Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 by


Susan M. Wanger

Enclosures:

Petition to Withdraw Holding of Abandonment or Revive Unintentionally
Abandoned Application;
Copy of Continuation Application;
Copy of Petition for Extension of Time; and
Return Postcard